

RESOLUTION NO. 1973

A RESOLUTION AMENDING RESOLUTION NO. 1763 OF THE CITY OF GARDNER, KANSAS (MIDWEST COMMERCE CENTER).

WHEREAS, the City of Gardner, Kansas (the "City"), is authorized and empowered pursuant to the provisions of K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the "Act"), to acquire, construct and equip certain facilities (as defined in the Act) for the stated statutory purposes, to enter into leases or lease-purchase agreements with any person, firm or corporation for said facilities and to issue revenue bonds for the purpose of paying the cost of such facilities;

WHEREAS, pursuant to the request from US Industrial REIT II, a Texas real estate investment trust (the "Company"), and Resolution No. 1763 of the City adopted on December 15, 2008 (the "Master Resolution of Intent"), the Governing Body of the City expressed its intent to issue up to \$160,000,000 principal amount of industrial revenue bonds under the Act for the purpose of acquiring, constructing, improving and equipping one or more commercial or warehouse facilities at the Midwest Commerce Center (the "Master Project" as further described in the Master Resolution of Intent), subject to the conditions set forth in the Master Resolution of Intent;

WHEREAS, the City has previously issued its Industrial Revenue Bonds (Taxable Under Federal Law), Series 2009 (US Industrial REIT II), in the principal amount of \$47,100,000 (the "Series 2009 Bonds") to finance the construction of a commercial warehouse (the "First Project") now leased by the City to RT Midwest Commerce I, LLC, a Delaware limited liability company, as successor to the Company ("RT Midwest"), pursuant to a Lease dated as of November 1, 2009;

WHEREAS, after accounting for the issuance of the Series 2009 Bonds, authorization under the Master Resolution of Intent currently remains for the issuance of additional industrial revenue bonds, in one or more series, in an aggregate principal amount not to exceed \$112,900,000;

WHEREAS, the Company has requested the City to issue an additional series of industrial revenue bonds in the approximate principal amount of \$38,000,000 to finance the construction of a commercial warehouse, manufacturing facility, call center, and related improvements at the Midwest Commerce Center (the "Second Project") to be leased by the City to the Company or its approved successors, assigns, or subtenants;

WHEREAS, the City is preparing an analysis of the costs and benefits of an exemption from ad valorem taxes pursuant to K.S.A. 79-201a *Second* and *Twenty-fourth* for the Second Project and will hold a public hearing on such exemption after providing notice of such hearing as required by K.S.A. 12-1749d, as amended;

WHEREAS, upon completion of the cost-benefit analysis and public hearing for the Second Project, the Governing Body of the City will consider a separate resolution determining its intent to issue industrial revenue bonds to finance the Second Project; and

WHEREAS, in connection with the request from the Company to consider issuing industrial revenue bonds for the Second Project, the Governing Body of the City now finds it necessary and desirable to amend the Master Resolution of Intent to revise the terms of the ad valorem tax abatement contained therein and to extend the expiration date of the Master Resolution of Intent;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS, AS FOLLOWS:

Section 1. The Master Resolution of Intent is hereby amended by deleting Section 4 thereof in its entirety and replacing it with the following:

Section 4. Ad Valorem Tax Exemption. The Company has requested an exemption from ad valorem taxes for the Master Project in exchange for making payments in lieu of taxes. In consideration of the Company's decision to acquire, construct and equip the Master Project and subject to the further terms and conditions of this Resolution, on receipt of an application for the issuance of a series of Bonds for a Project, the City agrees to take all appropriate action to prepare a cost benefit analysis and conduct a public hearing on an ad valorem tax exemption for such Project and, following the issuance of Bonds to finance such Project, to request the Kansas Board of Tax Appeals approve an ad valorem tax exemption, exclusive of special assessments and exclusive of the ad valorem property tax levied by a school district pursuant to the provisions of K.S.A. 72-8801, for all real and personal property financed with the Bonds; provided, however, that no tax exemption shall be requested for any Project or portion of a Project that is not eligible for a tax exemption pursuant to K.S.A. 79-201a *Second* and *Twenty-fourth*. Each Project financed with the proceeds of the Bonds will be eligible for a separate 10-year exemption with the first year of the exemption commencing on January 1 of the calendar year following the year in which the Bonds were issued to finance such Project. Each Project will be subject to a public hearing and cost benefit analysis requirements of K.S.A. 12-1749c and 12-1749d.

- (a) **First Project.** In consideration for the City's agreement to request a tax exemption for the First Project, RT Midwest, as successor to the Company, has previously agreed to make payments in lieu of taxes to the City for such First Project for the duration of the approved tax exemption in an amount equal to 50% of the amount of taxes that would have otherwise been payable but for the tax exemption in accordance with a Payment in Lieu of Tax Agreement dated as of January 20, 2009, between the City and RT Midwest (as a permitted successor or assign of Company).
- (b) **Second Project and Additional Projects.** In consideration for the City's agreement to request a tax exemption for the

Second Project, the Company (or its permitted successors and assigns) will be required to make payments in lieu of taxes to the City for such Project; provided, however, that no such payments shall be made during the first five years of the term of tax exemption, and that such payments shall increase by 20% per year for the five-year term remaining thereafter in accordance with the following schedule: Year 6: an amount equal to 20% of the taxes that would have otherwise been payable but for the tax exemption; Year 7: an amount equal to 40% of the taxes that would have otherwise been payable but for the tax exemption; Year 8: an amount equal to 60% of the taxes that would have otherwise been payable but for the tax exemption; Year 9: an amount equal to 80% of the taxes that would have otherwise been payable but for the tax exemption; and Year 10: an amount equal to 100% of the taxes that would have otherwise been payable but for the tax exemption. In consideration for the City's agreement to request a tax exemption for any additional Projects, the Company (and its permitted successors and assigns) will be required to make payments in lieu of taxes to the City for such additional Projects for the duration of any approved tax exemption, and such payments shall be in an amount consistent with the City's Economic Development Incentive Policy adopted in April 2015, as amended from time to time, and in accordance with an acceptable payment in lieu of tax agreement to be entered into between the City and the Company for each additional Project; provided however, in no event shall such payments in lieu of taxes to the City exceed 60% of the amount of taxes that would have been otherwise payable but for the tax exemption applicable to each additional Project, subject to any exclusions from tax exemption then in effect under Kansas law.

Notwithstanding the foregoing, the amount of payments in lieu of taxes for the First Project is subject to adjustment in accordance with Resolution No. 1737 of the City and the Payment in Lieu of Tax Agreement dated as of January 20, 2009, between the City and the Company, and the amount of payments in lieu of taxes for the Second Project and any additional Projects is subject to adjustment in accordance with the City's Economic Development Incentive Policy adopted in April 2015, as amended from time to time, and a payment in lieu of tax agreement entered into between the City and the Company for each such Project; provided however, in no event shall such payments in lieu of taxes to the City exceed 60% of the amount of taxes that would have been otherwise payable but for the tax exemption applicable to each additional Project, subject to any exclusions from tax exemption then in effect under Kansas law.

Section 2. The Master Resolution of Intent is hereby amended by deleting Section 11 thereof in its entirety and replacing it with the following:

Section 11. Effective Date. This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body of the City and shall remain in effect until December 15, 2023, and unless terminated prior to such date by the City, shall automatically renew for an additional five years thereafter, until December 15, 2028.

Section 3. This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body of the City.

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ADOPTED by the Governing Body of the City of Gardner, Kansas, on September 18, 2017.




(Seal)

CITY OF GARDNER, KANSAS

By 
Mayor

Attest:


City Clerk